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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-859]

100- to 150-Seat Large Civil Aircraft from Canada: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that 100- to 150-seat large civil aircraft (aircraft) from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017. The final estimated dumping margins of sales at LTFV are listed below in the section entitled “Final Determination.”

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Lilit Astvatsatrian, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4406 or (202) 482-6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2017, the Department published the *Preliminary Determination* in this LTFV the investigation, as provided by section 733 of the Tariff Act of 1930, as amended (Act),

in which the Department found that aircraft from Canada were sold at LTFV.¹ A summary of the events that have occurred since the Department published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.² The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The products covered by this investigation are aircraft from Canada. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

Since issuing the *Preliminary Determination*, the Department received scope comments from interested parties, including scope comments in case briefs. Although certain parties requested that the Department modify the scope, the Department has not revised the scope of this investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this

¹ See *100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 47697 (October 13, 2017) (*Preliminary Determination*) and accompanying memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of 100- to 150-Seat Large Civil Aircraft from Canada," dated October 4, 2017 (Preliminary Decision Memorandum).

² See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less Than Fair Value Investigation of 100- to 150-Seat Large Civil Aircraft from Canada" dated concurrently with this notice (Issues and Decision Memorandum).

investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

As discussed in the Issues and Decision Memorandum, for the final determination the Department continues to base Bombardier Inc's estimated weighted-average dumping margin on facts otherwise available with an adverse inference (AFA), pursuant to sections 776(a)-(b) of the Act.³

All-Others Rate

As discussed in the *Preliminary Determination*, the Department based the "All-Others" rate on the dumping margin alleged in the Petition in accordance with section 735(c)(5)(B) of the Act.⁴

Final Determination

The Department determines that the following estimated weighted-average dumping margins exist:

Exporter/Producer	Estimated Weighted-Average Dumping Margin (percent)	Cash Deposit Rate (Adjusted for Subsidy Offset(s)) (percent)
Bombardier, Inc.	79.82	Not Applicable
All-Others	79.82	Not Applicable

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of aircraft from Canada, as described in Appendix I of this notice, which were entered, or withdrawn from

³ See Issues and Decision Memorandum.

⁴ See *Preliminary Determination*.

warehouse, for consumption on or after October 13, 2017, the date of publication of the *Preliminary Determination* of this investigation in the *Federal Register*.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), CBP shall require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. However, because the Department did not make an affirmative determination for countervailable export subsidies in the companion CVD proceeding, the Department has not adjusted the estimated weighted-average dumping margin to offset countervailable export subsidies.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, because the Department applied total AFA to the individually examined company, Bombardier

Inc., in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, there are no calculations to disclose.

International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department will notify the U.S. International Trade Commission (ITC) of its final determination of sales at LTFV. As the final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days of the final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 18, 2017.

P. Lee Smith,
Deputy Assistant Secretary
for Policy and Negotiations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below.

“Standard 100- to 150-seat two-class seating capacity” refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. “Pitch” is the distance between a point on one seat and the same point on the seat in front of it.

“Standard 100- to 150-seat two-class seating capacity” does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150.

A “minimum 2,900 nautical mile range” means:

- (i) able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or
- (ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range.

The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS

subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Discussion of the Issues:
 - Comment 1: Application of Adverse Facts Available
 - Comment 2: Whether Sales or Likely Sales Occurred During the POI
 - Comment 3: Adequacy of Petition
 - Comment 4: Revision of the Seating Capacity
 - Comment 5: Removal of Nautical Mile Range Criterion
 - Comment 6: Airbus-Bombardier Transaction
- VI. Recommendation

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